Supreme Court, U.S.
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No. 96-

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

SAMUEL L. NARO AND LINDA NARO, HUSBAND AND WIFE,

Petitioners,

v.

HAMILTON TOWNSHIP, HAMILTON TOWNSHIP POLICE DEPARTMENT, DETECTIVE CAPTAIN THOMAS PIZZULLO, JOHN DOE I, JOHN DOE II, JOHN DOE III, JOHN DOE IV, JOHN DOE V, JOHN DOE VI, JOHN DOE VII, JOHN DOE VIII, JOHN DOE IX, JOHN DOE X (fictitious names meant to represent other police officers involved in the investigation), THE TRENTON TIMES, THE NEWHOUSE PUBLISHING COMPANY, PETER PAGE, RICHARD BILOTTI, THE TRENTONIAN, JOURNAL REGISTER COMPANY, MARK A. WALIGORE, PAUL MICKLE, H.L. SCHWARTZ, III, RON ROE I, RON ROE II, RON ROE III, RON ROE IV, RON ROE V, RON ROE VI, RON ROE VII, RON ROE VIII, RON ROE IX AND RON ROE X,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does a person become a limited purpose public figure concerning an uncharged criminal incident where the "public controversy" is created by press defendants' earlier publication about him regarding an unrelated charged offense, he does not invite or encourage media attention, participate in the public arena or attempt to influence the resolution of the public controversy as to either criminal matter, receives no media attention before the charged offense and public attention is involuntarily thrust on him as to both criminal matters?

Was press defendants' motion for summary judgment improperly granted where the evidence in the record could have supported a reasonable jury finding of actual malice and defendants purposefully avoided the truth by publishing that plaintiff was a murder suspect and other information about the investigation purportedly being conducted by the police on him?

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Samuel and Linda Naro respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of New Jersey in this case.

OPINIONS BELOW

The order of the Supreme Court of New Jersey denying petitioners' petition for certification (App., *infra*, 1a) is unreported. The opinion of the New Jersey Superior Court, Appellate Division (App., *infra*, 2a to 9a) is unreported.

JURISDICTION

The judgement of the New Jersey Superior Court, Appellate Division was entered on September 4, 1996 (App., *infra*, 2a). The Supreme Court of New Jersey denied a timely petition for certification on January 7, 1997 (App., *infra*, 1a). On March 28, 1997 (App., *infra*, 28a), the Hon. David H. Souter extended the time to file the writ of certiorari in this matter from April 7, 1997 to and including June 6, 1997. The jurisdiction of this Court is invoked under 28 U.S.C.§ 1257(a) to review a judgment of the Supreme Court of New Jersey by issuance of a writ of certiorari.

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the Constitution of the United States provides, in relevant part: "Congress shall make no law *** abridging the freedom of speech ***."

STATEMENT

A. Statement of the Case

Plaintiffs, a husband and wife, sued the press defendants, The Trentonian and the Trenton Times, on October 15, 1991 in the Superior Court of Mercer County, New Jersey. They

alleged that on October 25, 1990, press defendant, The Times, falsely, libelously and maliciously wrote and published in its newspaper an article which stated that plaintiff[1] was a suspect in the September 1989 murder of Marjorie Szeker and that on October 25, 1990, the township police confirmed that plaintiff was a suspect in that case. Plaintiff also alleged that on October 25, 1990, press defendant, The Trentonian, falsely, libelously and maliciously wrote and published in its newspaper an article which stated that the Trenton suspect owned a van at the time of the Szeker murder and that the vehicle was seen fleeing the scene. (App., *infra*, 16a to 19a). Defendants published a total of 7 articles in which they claimed that plaintiff was a murder suspect, 6 of which appeared virtually consecutively, with the last one appearing almost one year later.

These written statements allegedly injured plaintiff's good name, fame, credit and brought him into public disgrace and infamy among his neighbors and community, causing him to suffer humiliation, shame, embarrassment and degradation, as well as mental and emotional distress and other damages. (App., *infra*, 20a). Additionally, plaintiff, Samuel Naro's wife, Linda Naro (also a plaintiff), alleged that she was deprived of consortium and services of her husband. (App., *infra*, 25a to 26a). Compensatory and punitive damages, as well as attorney's fees and cost of suit and interest were sought by both plaintiffs. (App., *infra*, 19a to 20a; 24a; 26a).

Plaintiff has been a firefighter in Trenton, New Jersey since 1970. Before October 23, 1990, he had no criminal record, not even traffic violations. Unfortunately, on October 23, 1990, he was arrested on assault and related charges. Without his consent, these charges were publicized by both

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[1] Unless otherwise specified, "plaintiff" refers to Samuel Naro.

press defendants. Ultimately, on March 12, 1993, he was acquitted of these charges following a non-jury trial.

Since September 1989, the Hamilton Township police were investigating the murder of Marjorie Szeker, an incident that was unrelated to the assault charges that allegedly occurred over one year later and as to which plaintiff was ultimately acquitted. The police had a composite sketch of Szeker's alleged murderer. In an earlier article defendant, The Times, described the composite of the getaway car driver as a thin 20 - 30 year old white or Hispanic male.

Nevertheless, defendant, The Times', October 25, 1990 newspaper article labeled plaintiff a "suspect" in the Szeker murder, allegedly based on his resemblance to a composite sketch that was prepared by the police in September 1989, over one year before plaintiff's arrest on the unrelated assault charges. The front-page article indicated that the police confirmed that plaintiff was a suspect and identified an officer (Pizzullo) as the officer who provided information for the article. The Times', October 25, 1990 article described plaintiff as 48 years old. Plaintiff is white.

However, during depositions, the police captain (Pizzullo) indicated that when he had been asked by defendant's reporter, if plaintiff was a suspect in the murder, he replied that everyone was a suspect, but the police did not have anyone locked up. He was also deposed about being asked by the reporter if plaintiff resembled the composite and stated that during the media interview, he had responded in the affirmative, but had also indicated that he himself also looked like the composite. He had further stated that the composite was very general; there was nothing outstanding about it.

When deposed, the other alleged police source, the head of the Division of Police (Taylor) indicated that defendant's reporter had called him about the murder, possibly "fishing" for

a lead, as was this reporter's *modus operandi*. During depositions, the police head recalled that a defendant reporter advised him of the reporter's "understanding" that the police were looking at plaintiff as a murder suspect. The police head recalled that he did not tell the reporter that plaintiff was a suspect. On the contrary, he advised the reporter that he had no knowledge about the police looking at plaintiff for anything, so he referred the reporter to the captain. The captain then advised the police head that up to that point, the police had not considered plaintiff a suspect. However, because they were getting a lot of calls because of the newspaper articles and the composite, they were going to have to start looking at plaintiff. A few days to a week later, the captain told the police head that he (the captain) did not think that plaintiff committed the murder.

The police head was also questioned during depositions about his earlier certification in which he indicated that he told a Trentonian reporter that the police considered plaintiff a suspect. In the certification, the police head had indicated that for a period of time,[2] the police had considered plaintiff to be a suspect in the murder and that he had so informed a Trentonian reporter. However, during depositions, the police head stated that although he may have had such a conversation with a reporter, he did not remember.

Furthermore, a police lieutenant (Pollard) certified under oath that the police department's investigatory records contained no references whatsoever identifying plaintiff as a suspect in the murder investigation or otherwise referring to plaintiff as to that investigation. He also certified that there were no documents in possession of the police department's records as to the same.

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[2] The specific time period was not set forth in the certification.

On October 25, 1990, defendant, The Trentonian, also ran a front page article labeling plaintiff a suspect in the Szeker murder. That article named the township police as the sources for their story. The article headline stated that plaintiff was to "be quizzed" in the Szeker slaying. A later Trentonian article insinuated that plaintiff owned a van similar to the one seen at the murder scene. In fact, plaintiff was never confronted or questioned by the police. No investigation was conducted by the police regarding plaintiff, except with regard to a van which he allegedly owned. The police could not come up with the vehicle that plaintiff supposedly owned, which was allegedly similar to that seen near the murder.[3]

A subsequent article by defendant, the Trentonian, indicated that a suspect in the murder was a Hispanic man in his twenties, from the Trenton area, who had been arrested in the past and had been involved with drugs. According to this article, the authorities held a suspect, Rivera, prisoner in the county detention center on unrelated charges. The article indicated that the prisoner, a cocaine addict, had confessed to the murder. Significantly, plaintiff was 48 years old at the time of the publications.

The record has no indications that plaintiff was ever in the public eye regarding his employment or for any other purpose prior to his assault arrest. Similarly, the record provides no indications that during or after the publications, he elicited or encouraged any publicity or otherwise participated in or engaged in any public controversy. His depositions indicate that his attorney advised both plaintiffs not to speak to the newspapers about anything and that plaintiff never spoke to any

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[3] As late as September 4, 1991, The Times published another article in which it continued to refer to plaintiff as a murder suspect. By then, the police had ascertained that plaintiff's van did not match the one seen at the murder scene.

reporter about the news articles. Similarly, the record is barren of any indicia that he capitalized on the publicity that appeared after his assault arrest or after he was branded a murder suspect or in any way deployed that publicity in an effort to influence or resolve issues in a public controversy.

The only responses to the publicity on behalf of plaintiff were two articles appearing after he was branded a murder suspect. The articles quote his criminal defense attorney's denial of plaintiff 's murder involvement. Plaintiff is not quoted in the articles. The record reflects no personal remarks by him in response to the publicity about either the assault charge or as to his being labeled a murder suspect. His wife is quoted in one of the articles as essentially declining to comment.

B. Proceedings Below

Defendant, The Times, contended on its motion for summary judgment that plaintiff was a limited purpose public figure to whom the constitutional libel standard[4] of actual malice applied. This claim was based on this defendant's assertion that its statement labeling plaintiff a murder suspect comprised a topic of legitimate public concern. Additionally, defendant claimed that plaintiff's participation in the earlier armed robbery, with the use of weapons and disguises, constituted voluntary participation in a public controversy. Finally, this defendant asserted that since plaintiff's earlier robbery arrest was widely reported before his being implicated in the murder, he became a limited purpose public figure. Both defendants claimed that their publications about plaintiff being a murder suspect were true and, thus, not malicious.

Petitioner, in his opposition to defendant, The Times', motion, contended that he was not a limited purpose public

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[4] *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974); *New York Times v. Sullivan*, 376 U.S. 254 (1964).

figure. He maintained that his prior arrest for robbery, of which he was subsequently acquitted, did not create a public controversy or a topic of legitimate public concern. He also asserted that he did not place himself into the controversy regarding the murder investigation by his alleged earlier robbery. He also claimed that he had sufficiently proven actual malice to survive defendants' motion for summary judgment. The trial judge granted defendants' motion for summary judgment, relying, generally on *New York Times v. Sullivan*, *supra* and other authorities cited before him. (App., *infra*, 10a to 11a).[5]

Before the Appellate Division,[6] plaintiff adopted the same position as before the trial court. He also contended that his employment as a firefighter did not place him within the realm of a public figure. Defendant, The Times, made the same assertions as before the trial court. Additionally, he also claimed that plaintiff placed himself in the limelight concerning the murder by committing a criminal act with a *modus operandi* similar to that used in that murder, as well as to the earlier robbery. Thus, The Times claimed that plaintiff could not complain that he involuntarily became a limited purpose public figure. The defendants also reiterated their earlier contentions regarding actual malice.

The New Jersey court, citing *Gertz v. Robert Welch, Inc.*, *supra* and *Wolston v. Reader's Digest Ass'n, Inc.*, 443 U.S. 157 (1979), ruled that plaintiff was a limited purpose public figure. It based its decision on the following facts: that two days before the publication of the articles, plaintiff, a firefighter, was

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[5] Plaintiff and defendants, Hamilton Township, the Hamilton Township Police Department and Captain Pizzullo settled and these defendants and are not part of this petition. (App., *infra*, 12a).

[6] Hereinafter referred to as "the New Jersey court".

arrested after attempting to flee following the assault and robbery of an elderly man in Trenton, New Jersey. Plaintiff wore a disguise during the assault and owned a van during this time period. Ultimately, he was acquitted of those charges. Defendants, The Times and The Trentonian, two local newspapers, gave the robbery and plaintiff's firefighter employment a significant amount of publicity. The court concluded that plaintiff then became a suspect in a murder involving a different victim. Without any additional analysis, the court ruled that as such, plaintiff became a limited purpose public figure. It also ruled that plaintiff did not present substantial evidence that defendants knew he was not a suspect or entertained serious doubts as to the same, finding that the police were the basis of the stories. (App., *infra*, 6a to 7a).

In his petition for certification to the New Jersey Supreme Court, plaintiff essentially reiterated his position before the trial court and the Appellate Division. Citing *Wolston*, he claimed that he did not become a limited purpose public figure in the murder investigation by his alleged involvement in the earlier unrelated robbery. Defendant, The Times, also reiterated its earlier positions. It also sought to distinguish *Wolston*, claiming that this Court's decision did not control because the alleged criminal conduct in the present case was much more culpable. It also claimed that since *Wolston* was not decided under state law, it did not apply. The parties reiterated their positions regarding actual malice.

REASONS FOR GRANTING THE PETITION

As several Circuit Courts have acknowledged, there has been an ongoing struggle to define the parameters of public controversy and a limited purpose public figure. A noted divergence, which needs to be addressed by this Court, has appeared in several Circuit Courts regarding the parameters of *Gertz, Wolston and Hutchinson v. Proxmire*, 443 U.S. 111

(1979). Several Circuit Courts have gone far astray, and, like the New Jersey court, have created unwarranted exceptions to these cases which directly fly in the face of the rationale of this Court's rulings.

This case presents a timely opportunity to refine the contours of these concepts and provide uniformity to the Circuit Courts' and state courts' interpretations. Moreover, the decision below was clearly erroneous and the issues it addresses are highly significant.

I. The Ruling of the New Jersey Superior Court, Appellate Division, As Upheld by the New Jersey Supreme Court, Conflicts with the Principles of This Court's Prior Rulings, As Well As with Several Circuit Court of Appeals' Interpretations Regarding the Parameters of Public Controversy and Limited Purpose Public Figure

A. This Court's Prior Rulings

In the landmark case of *New York Times Co. v. Sullivan*, *supra*, 280, this Court ruled that the First Amendment precluded defamation recovery by a public figure unless the plaintiff proved the publication of a defamatory falsehood with actual malice, *i.e.*, with knowledge that it was false or with reckless disregard of whether or not it was false. In *Gertz v. Welch, Inc.*, *supra*, this Court specifically declined to apply the *New York Times* standard to private individuals. This Court based its refusal to extend the *New York Times* rule on public figures' ability to resort to effective self-help, thus, making them less vulnerable to injury from defamatory statements. And, more importantly, public figures voluntarily expose themselves to increased risk of injury from defamatory falsehood. *Gertz v. Welch, Inc.*, *supra*, 164, citing *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 164 (1967) (Warren,

C.J., concurring). Thus, public persons are deemed less deserving of protection than private ones.

This Court has identified public figures as generally those who "have assumed roles of special prominence in the affairs of society". *Gertz v. Welch, Inc.*, *supra*, 164. Some such individuals occupy positions of such persuasive power and influence that they are considered public figures for all purposes. However, more frequently, public figures have "thrust themselves to the forefront of particular controversies in order to influence the resolution of the issues involved." *Gertz v. Welch, Inc.*, *supra*, 164. In this respect, this Court has focused on the nature and extent of an individual's participation in the particular controversy giving rise to the defamation. In *Gertz*, the plaintiff, an attorney, had not taken part in the criminal prosecution that engendered the publication, had not discussed the litigation with the press and limited his participation in the civil litigation to representing a private client. Under the circumstances, he was not considered a public figure and was not required to prove actual malice on the part of defendants.

In *Wolston v. Reader's Digest Ass'n, Inc.*, *supra*, this Court directly confronted the applicability of the *Gertz* standards to criminal defendants. In *Wolston*, defendant's book referred to plaintiff as an identified KGB agent who had been indicted for espionage and also listed him in the book's index to the KGB. Plaintiff was never indicted for espionage. However, he had failed to respond to a grand jury subpoena regarding an investigation into KGB intelligence activities, as a result of which, an order to show cause was issued. Over the next two days, 7 newspaper articles focused on his failure to appear. Ultimately, plaintiff pleaded guilty to the charge of contempt. Newspaper articles reported the contempt proceedings, his guilty plea and sentence. A total of 15 articles covered these and the preceding events. Plaintiff, who had led a private

existence before the articles, returned to relative obscurity after his sentencing. The book by defendants appeared several years later.

This Court ruled that plaintiff was not a limited purpose public figure.[7] His mere citation for contempt did not turn him into one. His contempt citation and his actions which brought it about were undoubtedly newsworthy and attracted media attention. However, "[a] private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention." *Wolston v. Readers's Digest Ass'n, Inc., supra*, 168.

Rather, the focus is primarily on the nature of plaintiff's involvement in the public controversy. Plaintiff had not voluntarily thrust or injected himself into the forefront of the public controversy about the investigation of KGB espionage. He was dragged unwillingly into the controversy; the government pursued him in its investigation. His failure to appear before the grand jury and his contempt conviction undoubtedly attracted media attention. However, his voluntary failure to appear before the grand jury, knowing that his action might attract publicity, was not decisive.

Similarly, plaintiff in *Wolston* did not engage the attention of the public in order to influence the outcome of the issues involved and did not assume any special prominence in the resolution of the public question. His crime was not calculated to draw attention to himself, to invite public comment or to influence the public as to any issues. He did not use his

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[7] Since he had not achieved any general fame or notoriety or assumed a role of special prominence in the affairs of society as a result of the contempt citation or because of the espionage investigation, he was not a public figure for all purposes. *Wolston v. Readers's Digest, Assn. Inc., supra*, 164.

contempt citation as a public fulcrum to create public discussion about the investigation or the prosecution. His failure to appear before the grand jury was not intended to affect any issue of public concern, nor did it have that impact.

This Court reiterated its earlier ruling in *Time, Inc. v. Firestone*, 424 U.S. 448 (1976), that generally participants in litigation are "drawn into a public forum largely against their will in order to obtain the only redress available to them or to defend themselves against the State or by others." *Wolston v. Reader's Digest Ass'n, Inc., supra*, 168. Such persons do not forfeit their rights simply because they are drawn into a courtroom and any other conclusion would create an "open season" for those seeking to defame someone who has been criminally convicted.

On the same day as *Wolston,* in *Hutchinson v. Proxmire, supra*, this Court also delineated what comprises a "public controversy". There, plaintiff, a state mental hospital researcher, was given a Golden Fleece award by a United States Senator to publicize what the Senator perceived as an egregious example of wasteful governmental spending. The award was publicized in a press release, as well as in a speech by the Senator, to which plaintiff responded. Plaintiff's response was reported by some newspapers and wire services.

This Court ruled that plaintiff's earlier published professional writings were only of scholarly interest and did not create controversy until the bestowal of the award. Since their controversial status only resulted from the award, defendant could not point to a controversy he himself created as the source of plaintiff's public figure status. Clearly, defamation defendants cannot, by their own conduct, create their own defense by making the plaintiff a public figure. *Hutchinson v. Proxmire, supra*, 134. Also, as this Court declared in *Wolston*, one who engages in criminal conduct does not automatically

become a public figure on issues as to his conviction. *Wolston v. Reader's Digest Association, Inc.*, *supra*, 168.

B. *The Interpretation of Gertz, Wolston and Hutchinson by the New Jersey Court Ignores the Basic Tenets of These Rulings and is Therefore Erroneous*

The New Jersey court ignored the basic tenets of this Court's rulings in *Gertz, Wolston* and *Hutchinson.* Its erroneous decision needs to be rectified and guidance should be provided to the state and federal courts regarding these cases' highly important jurisprudence.

The New Jersey court based its decision on the following facts: that two days before the publication of the articles, plaintiff, a firefighter, was arrested after attempting to flee following the assault and robbery of an elderly man in Trenton, New Jersey. Plaintiff wore a disguise during the assault and owned a van during this time period. Ultimately, he was acquitted of those charges. Defendants, The Times and The Trentonian, two local newspapers, gave the robbery and plaintiff's firefighter employment a significant amount of publicity. Plaintiff then became a suspect in the murder involving a different alleged victim. Without any additional factual analysis, the New Jersey court concluded that as such, plaintiff became a limited-purpose public figure. (App., *infra*, 7a).[8]

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[8] In addition to addressing the federal constitutional malice standards, the New Jersey court also ruled on the state fair report privilege. (App., *infra*, 8a to 9a). Nevertheless, this Court should address the federal constitutional issues posed herein based on special considerations discussed *infra* regarding the importance of clarifying the parameters of this Court's rulings in *Wolston, Gertz* and *Hutchinson. See, Hutchinson v. Proxmire*, *supra*, 122.

At the outset, it is clear that plaintiff's firefighter employment does not make him a public figure. In *Gertz*, this Court has specifically rejected attorney status as delineating a public figure. *See also Marcone International Magazine for Men*, 754 F. 2d 1072 (3rd Cir. 1985), *cert. den.* 474 U.S. 864 (1985); *Jenoff v. Hearst Corporation*, 644 F. 2d 1004 (4th Cir. 1981). Surely, if an attorney, who, by dint of one's professional situation, with generally greater opportunity for media access and influence, does not comprise a public figure on professional grounds, a firefighter is even far less likely to. Here, plaintiff did not occupy an extraordinary or influential position that would have justified public figure status application on the basis of his profession.

In *Rosenblatt v. Baer*, 383 U.S. 75, 86, n. 13, (1966), this Court also addressed a government employee's status. There, this Court observed that the government position must invite public scrutiny and discussion of the person holding it, totally apart from the scrutiny and discussion occasioned by the particular charges in controversy. Under the circumstances, to the extent that a firefighter's position were deemed public employment, plaintiff could not be viewed as a public figure based on his profession. The Appellate Division clearly erred in relying on that factor in its limited public figure characterization of plaintiff.

The New Jersey court also fell far short of the mark in its analysis of plaintiff's involvement in a public controversy. In its finding that plaintiff was a limited purpose public figure, it relied on earlier publicity by defendant newspapers concerning the robbery. (App., *infra*, 7a). Defendants initially published a total of 3 articles regarding the robbery case. Subsequently, they published a total of 7 articles in which they claimed that plaintiff was a murder suspect, 6 of which appeared almost consecutively, with the last one appearing almost one year later.

In this respect, the New Jersey court clearly erred. It was manifestly improper for the court to rely on the earlier publicity about the robbery as the source of the public controversy in which plaintiff was allegedly involved. The earlier controversy was not one into which plaintiff thrust himself, but one that was also generated by the identical press defendants. As such, defendants cannot take advantage of a controversy which they themselves created and rely on it as the source of plaintiff's public figure status.[9] This Court's ruling in *Hutchinson* clearly proscribes such an approach.

Specifically, the record has no indications that plaintiff was ever in the public eye regarding his employment or for any other purpose prior to his assault arrest. Similarly, the record provides no indications that during or after the publications, he elicited or encouraged any publicity or otherwise participated in or engaged in any public controversy. His depositions indicate that his attorney advised both plaintiffs not to speak to the newspapers about anything and that plaintiff never spoke to any reporter about the news articles. Similarly, the record is barren of any indicia that he capitalized on the publicity that appeared after his assault arrest or after he was branded a murder suspect or in any way deployed that publicity in an effort to influence or resolve issues in a public controversy.

The two responses to defendants' publications by plaintiff's attorney, who defended him in the robbery case, clearly do not vitiate plaintiff's private status. The articles quote his criminal defense attorney's denial of the murder involvement insinuation. Plaintiff is not quoted in the article. The record reflects no indicia that plaintiff ever made any

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[9] At no point was it contended that plaintiff was an involuntary public figure. As described by this Court, that situation is extremely rare (*see, Gertz, supra*, 345; *Foretich v. Capital Cities/ABC, Inc.*, 37 F.3d 1541,1552 (4th Cir. 1994), and, in any event, was inapplicable here.

personal remarks in response to the publicity about either the assault charge or as to his being labeled a murder suspect or that he ever personally addressed or responded to defendants' publications. His wife is merely quoted in the article as essentially declining to comment.

Merely responding to a defamatory statement does not bestow public figure status. *Hutchinson v. Proxmire*, *supra*, 111; *Clyburn v. News World Communications, Inc.*, 903 F. 2d 29, 32 (D.C. Cir. 1990); *Foretich v. Capital Cities/ABC, Inc.*, *supra*. As noted by this Court in *Hutchinson*, where plaintiff merely responds to the allegedly defamatory publication, such response does not comprise access to the media of the type available to public figures. Rather, public figures, as an accouterment of their pre-existing status, are expected to have regular and continuing access to the media. *Hutchinson v. Proxmire*, *supra*, 134.

The New Jersey court's interpretation represents an unwarranted extension of this Court's rulings. Essentially, the court declared that someone who is once accused of criminality (although he is ultimately acquitted) is fair game for unwarranted insinuations about involvement in another unrelated criminal incident for which he is never charged merely because of publicity about the first alleged offense. In the New Jersey court's view, such a person is fairly subjected to media attention although he was never in the public eye before the initial criminal charge. Furthermore, he is susceptible to media attention even though he takes no steps whatsoever to draw attention to himself in order to invite public comment or to influence public opinion by generating publicity. The sole qualifying factor for his limited public figure status is his unsolicited prior media exposure about an unrelated offense. That, in the New Jersey court's view, suffices to thrust him into the public vortex for future media attention, despite the absence of any effort to invite or encourage such attention

about either the initial charge or the unrelated murder or to capitalize on the publicity in order to influence the outcome of the public controversy. Clearly, such an approach has no basis in this Court's prior rulings.

Left unreviewed, the New Jersey court's ruling would permit the media to avoid defamation responsibility by capitalizing on the happenstance of earlier publicity about an unrelated criminal incident. As such, the media could simply publicize alleged criminality by someone, and, based on the earlier publicity, immunize itself from malice liability merely because of the initial allegation. Pursuant to such an approach, the *Wolston* criteria of voluntary entry into the public sphere by, at the minimum, some form of elicitation or encouragement of public attention, would be perverted. Its key distinction, the defamation plaintiff's passive versus active behavior with respect to the public controversy, would be obliterated. In its stead, a new type of press created controversy would be employed, broader in scope than the one rejected by *Wolston* and *Hutchinson*, by permitting the press to generate both the initial controversy, as well as the one that forms the basis of the defamation suit.

Clearly, *Wolston* does not sanction an "open season" on those against whom criminality is unjustifiably insinuated simply because they have been previously charged with an unrelated offense, especially when the first alleged offense is never substantiated and the second insinuated one is never even charged.[10] Stated somewhat differently, the *Wolston* criteria cannot be evaded simply because two acts of criminality are

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[10] Plaintiff, a 48 year old white man, was never charged with the murder. According to articles by press defendants which appeared after those labeling plaintiff a murder suspect, someone else, a 25 year old Hispanic, who was ultimately detained on other charges, acknowledged having committed the murder.

bandied about by the press, instead of just one, where the defamation plaintiff remains passive and takes no steps to attract or capitalize on the public attention. Just because a defamation plaintiff was once involuntarily drawn into a courtroom does not authorize the press to state that plaintiff may be criminally involved a second time in an unrelated matter. Requiring plaintiff to meet the stringent *New York Times* standards would thus encourage such unwarranted attribution of horrendous criminality at the expense of reputational integrity.

C. *The New Jersey Court's Interpretation of This Court's Prior Rulings in Gertz, Wolston and Hutchinson Aggravates the Existing Divergent Interpretations of These Cases by the Circuit Courts of Appeals*

The federal courts have directly acknowledged difficulty in delineating the scope of the public figure doctrine. This is reflected by the divergent interpretations of the Third, Fourth, Sixth and D.C. Circuit Courts of Appeals. For instance, several Circuit Courts of Appeals have noted the existence of confusion over the elements of a "public controversy" and the contours of the public and private figure categories. *See, e.g., Marcone v. Penthouse International Magazine for Men, supra*; *Street v. National Broadcasting Co.*, 645 F. 2d 1227, 1234 (6th Cir. 1981). Unfortunately, in struggling to define the parameters of *Wolston and Hutchinson*, several Circuit Courts have created new exceptions to this Court's criteria which totally pervert these cases' rulings.

Several Circuit Courts have grappled with delineating the nature of the public controversy as to publicity preceding the cause of action. Noteworthy in this area is *Waldbaum v. Fairchild Publications, Inc.*, 627 F. 2d 1287 (D.C. Cir. 1980),

cert. den. 101 S. Ct. 266 (1980). There, the District of Columbia Circuit looked to what was already in dispute at the time of the publication in issue. In this respect, it posited the following test: "[t]o determine whether a controversy indeed existed and, if so, to define its contours, the judge must examine whether persons actually were discussing some specific question. A general concern or interest will not suffice." *Waldbaum v. Fairchild Publications, Inc., supra*, 1297. In this respect, the court should ascertain whether there was coverage of the debate, "what people were saying and uncovering facts and theories to help the public formulate some judgment." *Id.* The court should ascertain whether "a reasonable person would have expected persons beyond the immediate participants in the dispute to feel the impact of its resolution." *Id.* According to *Waldbaum*, "[i]f the issue was being debated publicly and if it had foreseeable and substantial ramifications for non-participants, it was a public controversy." *Id. See also Tavoulareas v. Piro*, 817 F. 2d 762 (D.C. Cir. 1987), *cert. den.* 484 U.S. 870 (1987). Significantly, some Fourth Circuit cases have chosen to follow *Waldbaum*. *See, e.g., Foretich v. Capital Cities/ABC, Inc., supra*; *Reuber v. Food Chemical News, Inc.*, 925 F. 2d 703 (4th Cir. 1991), *cert. den.* 501 U.S. 1212 (1991).

While the *Waldbaum* criteria are helpful by focusing on the existence of a public controversy before the publication, they do not directly take into account the existence of earlier publicity regarding the defamation plaintiff that is purely press created by the very same press defendants about an unrelated matter. In other words, they do not address a preceding press generated controversy that comprises the sole source of media attention and is created by the identical publishers. *Cf., Foretich v. Capital Cities/ABC, Inc., supra*; *Silvester v. American Broadcasting Companies, Inc.*, 839 F. 2d 1491 (11th Cir. 1988) (distinguishing earlier pervasive publicity generated

by other forms of media from that which occasioned the defamation suit). Obviously, without explicit consideration of earlier press generated publicity by the same media sources, *Wolston* and *Hutchinson* can be easily circumvented. Press defendants would simply have to issue a single article about an unrelated activity by plaintiff and thus avoid the press created controversy designation.

Another Circuit has taken prior publicity by the same publisher into account. In *Jenoff v. The Hearst Corporation, supra*, the Fourth Circuit correctly analyzed the plaintiff's alleged criminal misconduct vis-a-vis his role in the public controversy. In that case, defendant initially published an article about the plaintiff's (a police informant) activities. The first article indicated that posing as an investigator, plaintiff had infiltrated the office of an attorney who represented a notorious criminal defendant.[11] A subsequent allegedly defamatory article stated that plaintiff had broken into the attorney's office and that key written statements regarding the notorious criminal's case had disappeared at that time. The court observed that plaintiff enjoyed no special access to the media, other than that which the media itself created by the defamatory publication. Significantly, the court recognized that if a public controversy existed before the defamatory articles, plaintiff did not voluntarily participate in it. The court also recognized that the same article series that initially focused on plaintiff simultaneously generated the specific public controversy. Although the subject of the articles was of general public concern, it ruled that such general concern was rejected by *Hutchinson* as a public controversy. *Jenoff v. The Hearst Corporation, supra*, 1007.

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[11] That article was not alleged to be defamatory.

Like the New Jersey court, the Third Circuit has also misconstrued *Wolston*'s distinction between active and passive defamation plaintiffs. In *Marcone v. Penthouse International Magazine for Men, supra*, the Third Circuit concluded that "active" criminal misconduct by the plaintiff comprises one of the factors leading to public figure status classification. In that case, the plaintiff, an attorney, had been indicted for conspiracy to possess with intent to distribute and to distribute marijuana. Due to legal technicalities, the indictment was withdrawn without prejudice to his being reindicted, but, inexplicably, he was not reindicted. Defendant's article, which appeared several years later, claimed that plaintiff contributed a large down payment for marijuana transactions and that charges against him were dismissed due to his cooperation with the State. The Third Circuit opined that plaintiff's criminal activity comprised a relevant consideration in assessing his public figure status.[12] It distinguished *Wolston*, based on the "passive" nature of the crime involved from the "active" criminality engaged in by plaintiff Marcone. As to these factors, the Third Circuit relied on *Rosanova v. Playboy Enterprises, Inc.*, 411 F. Supp. 440, 443 (S.D. Ga. 1976), *aff'd* 580 F. 2d 859 (5th Cir. 1978), which preceded *Wolston*. Thus, the validity of *Marcone* was significantly undercut.

In *Marcone*, the Third Circuit's active/passive criminality distinction created an artificial and unwarranted exception to the *Wolston* doctrine. Significantly, in a later ruling by different judges, in *Schiavone Construction Co.*, 847 F. 2d 1069 (3rd Cir. 1988), the Third Circuit no longer employed this

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[12] In finding plaintiff a limited purpose public figure, the Third Circuit also relied on plaintiff's voluntary non-representational contacts and meetings with a notorious motorcycle gang, which was linked to a major drug ring. *Marcone v. Penthouse International Magazine for Men, supra* 1085.

distinction. Thus, there appears to a divergence within that Circuit itself as to this area. *See Steaks Unlimited, Inc. v. Deaner*, 623 F. 2d 264 (3rd Cir. 1980).

The active versus passive criminal misconduct exception created by the Third Circuit has no foundation in this Court's ruling in *Wolston*, which recognized that criminal defendants are not transformed into public figures by their conviction. Pursuant to *Wolston*, public figure status requires, *inter alia*, voluntary participation in a public controversy, coupled with an intention to influence to resolution of the public issue. Active versus passive criminal misconduct is irrelevant to those considerations. Passivity is relevant only insofar as a plaintiff voluntarily participates in the public brouhaha and tries to influence its outcome, but is clearly not germane to the litigant's role in the crime that engenders the media interest. Otherwise, a litigant would be penalized for merely being the object of a press-created controversy.

An equally unfounded distinction has been coined by the Sixth Circuit, which has also markedly departed from this Court's promulgated standards. That Circuit has created a new and unwarranted exception to the *Wolston* criteria as to what comprises voluntary participation in the public arena by a defamation plaintiff who is involved in a criminal case. Specifically, in *Street v. National Broadcasting Co.*, *supra*, 1234-35, the Sixth Circuit ruled that where the issue of truth and the voluntariness of the plaintiff's participation in the public controversy were the same, the plaintiff's public figure status was to be determined without regard to whether that litigant voluntarily thrust itself in the forefront of the public controversy. The court acknowledged that there, the rape victim did not voluntarily inject herself into a criminal prosecution. However, voluntariness was closely bound to the truth. If the victim's rape accusation were true, her participation in the legal process was deemed involuntary; if

her accusation were false, it was considered voluntary. Absent evidence of voluntariness other than that turning on the issue of truth, voluntariness would not be considered and public figure status would be ascertained only by consideration of prominence and access to the media. *Cf. Clark v. American Broadcasting Companies, Inc.*, 684 F. 2d 1208 (6th Cir. 1982).

The Sixth Circuit's refusal to consider voluntariness, in the case of a rape victim, where voluntariness was intertwined with the truth, was also an unwarranted divergence from *Wolston*. Nowhere in *Wolston* does such an exception appear; nor does it fall within *Wolston*'s rationale. Rather, *Wolston* and *Time* require that limited public figure status determination rest on, *inter alia*, the voluntariness of the plaintiff's entry into the public arena, regardless of the perceived truth or falsity of the plaintiff's position as to the event that triggered the controversy. As this Court ruled in *Time*, involvement in the judicial process does not signify one's voluntary injection into the public limelight. Thus, the truth or falsity of the plaintiff's claims as an alleged crime victim has no bearing on his/her voluntary participation in the public sphere. *Cf. Clark v. American Broadcasting Companies, Inc.*, 684 F. 2d 1208 (6th Cir. 1982).

These cases reflect the creation of unwarranted exceptions to *Gertz, Hutchinson and Wolston* which fall entirely outside their rationales. They illustrate the lack of uniformity in the Circuits and the confusion experienced by the New Jersey court. This Court should grant the plaintiff's petition to resolve the confusion and disarray in the courts and give much needed guidance regarding this vital area.

II. The New Jersey Court's Ruling Conflicts with This Court's Decision Regarding Purposeful Avoidance of the Truth

The New Jersey court's decision also conflicts with this Court's ruling in *Harte-Hanks Communications, Inc., v. Connaughton*, 491 U.S. 654 (1989), in which this Court relied on the purposeful avoidance of the truth doctrine. The case involved the following factual scenario: defendant newspaper published an article indicating that plaintiff, an unsuccessful judicial electoral candidate, had used "dirty tricks" and made bribe-type offers to a grand jury witness and to her sister for their help in a grand jury investigation of the incumbent judicial candidate's director of court services. The article quoted the grand jury witness as the source of its information. However, defendant had failed to contact the grand jury witness' sister, even though she was the most important witness to the bribery charges. Defendant also failed to listen to the tapes of the interviews between plaintiff and the grand juror's sister, although the tapes could have demonstrated that the witness' charges were false because she misinterpreted plaintiff's remarks to her or because the witness was deliberately lying.

This Court found it "bewildering" that defendant failed to interview the grand jury witness' sister, since the sister was the one person who could have confirmed the witness' account. If the newspaper had serious doubts about the truth of the witness' allegations, but was committed to running the story, it had good reason to forego such an interview since a denial by the witness' sister would have quickly ended the planned story. The newspaper's failure to listen to the tapes of plaintiff's interviews of the witness' sister also supported a finding of actual malice. Much of the witness' allegations could have been verified or disproved by simply listening to the tapes.

This Court reiterated that failure to investigate before publishing did not suffice to establish reckless disregard of the truth, even though a reasonably prudent person would have investigated. Nevertheless, recklessness could be found "where there were obvious reasons to doubt the veracity of the informant or the accuracy of his reports." *Harte-Hanks v. Communications, Inc.*, *supra*, 687. The newspaper's derelictions set forth above comprised a deliberate decision not to acquire facts that could have confirmed the falsity of the source's charges. The Court distinguished the mere failure to investigate, which alone would not support an actual malice finding, from the purposeful avoidance of the truth. Under the circumstances of that case, it concluded that purposeful avoidance of the truth, comprising actual malice, had transpired.

Unfortunately, the New Jersey court failed to take cognizance of the *Harte-Hanks* principles. It ruled that the basis of defendant's stories was primarily police sources and that thus, plaintiff failed to present substantial evidence of defendant's knowledge that plaintiff was not a suspect or entertained serious doubts about the same. It utterly failed to address defendants' purposeful truth avoidance tactics, much resembling those in *Harte-Hanks*.

Specifically, the record reflects that on September 26, September 28 and October 7, 1989, articles by defendants, The Trentonian and the Times, described a composite sketch of the alleged murderer. They stated that the getaway car driver was a thin 20 - 30 year old white or Hispanic male.

Armed with that knowledge, which was set forth in their own articles, defendants, nevertheless, subsequently printed a series of 7 articles in which they branded plaintiff, a 48 year old white man, as the murder suspect. In the 7 articles, beginning on October 25, 1990 and concluding almost one year later, they

described him as the murder suspect. Defendants' pervasive publicity thus branded plaintiff, based on his purported resemblance to a composite sketch that was prepared by the police over one year before his arrest on the unrelated assault charges. The article by defendant Trentonian also stated that the police confirmed that plaintiff was a suspect and identified an officer (Pizzullo) as the officer who provided some information for the article. Thereafter, follow-up articles were also run by both defendants.

The October 25 article also stated that plaintiff was to "be quizzed" in the slaying. A later Trentonian article insinuated that plaintiff owned a van similar to the one seen at the murder scene. In fact, plaintiff was never confronted or questioned by the police. No investigation was conducted by the police regarding plaintiff, except with regard to a van which he allegedly owned. The police could not come up with the vehicle that plaintiff supposedly owned, which was allegedly similar to that seen near the murder.

A subsequent article by defendant, the Trentonian, indicated that a suspect in the murder was a Hispanic man in his twenties, from the Trenton area, who had been arrested in the past and had been involved with drugs. According to this article, the authorities held a suspect, Rivera, prisoner in the county detention center on unrelated charges. The article indicated that the prisoner, a cocaine addict, had confessed to the murder. Significantly, plaintiff was 48 years old at the time of the publications.

As late as September 4, 1991, The Times published another article in which it continued to refer to plaintiff as a murder suspect. However, by then, the police had ascertained that plaintiff's van did not match the one seen at the scene and had determined that plaintiff was not a murder suspect.

Moreover, during depositions, the police captain (Pizzullo) indicated that when he had been asked by defendant's reporter, if plaintiff was a suspect in the murder, he replied that everyone was a suspect, but the police did not have anyone locked up. He was also deposed about being asked by the reporter if plaintiff resembled the composite and stated that he had responded in the affirmative, but also indicated that he himself also looked like the composite. He further stated that the composite was very general; there was nothing outstanding about it. In short, he did not corroborate in depositions the Times' claim that the police had confirmed to that newspaper that plaintiff was a murder suspect.

When deposed, the other alleged police source, the head of the Division of Police (Taylor) indicated that a defendant reporter had called him about the murder, possibly "fishing" for a lead, as was this reporter's *modus operandi*. During depositions, the police head recalled that defendant's reporter advised him of the reporter's "understanding" that the police were looking at plaintiff as a murder suspect. The police head recalled that he did not tell the reporter that plaintiff was a suspect. On the contrary, he advised the reporter that he had no knowledge about the police looking at plaintiff for anything, so he referred the reporter to the captain. The captain then advised the police head that up to that point, the police had not considered plaintiff a suspect. However, because they were getting a lot of calls due to the newspaper articles and the composite, they were going to have to start looking at plaintiff. A few days to a week later, the captain told the police head that he (the captain) did not think that plaintiff committed the murder. He also failed to corroborate the media claim of police confirmation as to plaintiff's purported murder suspect status.

The police head was also questioned during depositions about his earlier certification in which he indicated that he told a Trentonian reporter that the police considered plaintiff a

suspect. In the certification, the police head had indicated that for a period of time,[13] the police had considered plaintiff to be a suspect in the murder and that he had so informed a Trentonian reporter. However, during depositions, the police head stated that although he may have had such a conversation with a reporter, he did not remember.

Furthermore, a police lieutenant (Pollard) certified under oath that the police department's investigatory records contained no references whatsoever identifying plaintiff as a suspect in the murder investigation or otherwise referring to plaintiff as to that investigation. He also certified that there were no documents in possession of the police department's records as to the same.

Thus, clearly, defendants had obvious reasons to doubt their claim that plaintiff was a murder suspect. At the time of the initial articles, the media itself manufactured the police as the source of their information. The media's claim of the 48 year old white plaintiff's resemblance to a composite sketch was disproven by their own articles both before and after those branding him a murder suspect, as these articles alleged a 20 - 30 year old Hispanic or white suspect. Thus, based on the information available in their own files, they had obvious reason to doubt the veracity of their claim that plaintiff resembled the composite sketch of the alleged murderer. Rather, they exhibited a manifest intention to avoid the truth.

The same conclusion obtains regarding the additional claims about plaintiff's purported murder suspect status. For instance, the media contended that plaintiff was to be questioned by the police about the murder. A Trentonian article also insinuated that plaintiff owned a van similar to the one seen at the murder scene. In fact, plaintiff was never

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[13] The specific time period was not set forth in the certification.

confronted or questioned by the police. No investigation was ever conducted by the police regarding plaintiff, except with regard to a van which he allegedly owned. The police could not come up with the vehicle that plaintiff supposedly owned, which was allegedly similar to that seen near the murder. A few days to a week after defendants contacted the police, the police determined that plaintiff did not commit the murder.

Nevertheless, apparently, defendants failed to reinterview the very police sources that could have resolved plaintiff's innocence. In fact, almost one year after the initial articles, The Times continued to refer to plaintiff as a murder suspect, long after the police has stopped viewing him as such. Significantly, about 6 months earlier, the media had reported that a young Hispanic suspect had allegedly confessed to the crime.

Under the circumstances, defendants' conduct manifested a deliberate effort to refrain from learning the truth. As in *Harte-Hanks*, here, too, the onus was on defendants to not "play ostrich" in an attempt to insulate themselves from malice liability. As in *Harte-Hanks*, their behavior was premised on a desire to run the story, without being confronted with the truth, at the expense of plaintiff's reputation. This Court should not countenance such an effort to deviate from its ruling.

III. The Questions Presented Are Important

This case presents for resolution the parameters of this Court's prior rulings as to what comprises a public controversy and who is a limited purpose public figure. The case also presents an opportunity to clarify the contours of the purposeful avoidance of the truth doctrine. These are essential determinations in any analysis of defamatory liability.

The cases discussed earlier demonstrate the difficulty which the Circuit Courts have encountered in defining the scope of this Court's prior rulings. One pre-*Wolston* District Court likened the task of distinguishing between public and private figures to "trying to nail a jelly fish to the wall". *Rosanova v. Playboy Enterprises, Inc.*, *supra*.

The unfounded exceptions to this Court's rulings that have been coined by the Third and Sixth Circuits demonstrate the confusion that has arisen in the Circuits and reflect the need for this Court's intervention. Both the active/passive criminality distinction and the distinction as to the truth/falsity of the plaintiff's reason for filing criminal charges are totally irrelevant considerations as to whether the plaintiff actively participated in the public controversy and sought to thereby influence public opinion.

This Court should address the divergence that is apparently emerging in the Circuit Courts in this area and refine the contours of its earlier rulings. This Court should clarify that prior publicity by the same press defendants about the same defamation plaintiff as to an unrelated claimed criminal involvement, without more, cannot serve as the basis for a public controversy and the ensuing bestowal of limited public figure status.

Clarification is also needed as to the contours of the purposeful avoidance of the truth doctrine. This Court's guidance is also needed to further define this important area.

Thus, this Court should grant the plaintiff's petition to resolve the divergence by several Circuit Courts and the New Jersey court from this Court's prior rulings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 6, 1997

APPENDIX

APPENDIX A

SUPREME COURT OF NEW JERSEY
C-439 September Term 1996
43,037

SAMUEL NARO, et al.,
Plaintiffs-Petitioners,

v.

HAMILTON TOWNSHIP, et al.,
Defendants,

and

THE TRENTON TIMES & THE TRENTONIAN,
Defendants-Respondents.

ON PETITION FOR CERTIFICATION

[stamp—Filed, Jan 07 1997, /s/ Stephen W. Townsend, Clerk]

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-6485-94 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 6th day of January, 1997.

/s/ Stephen Townsend
CLERK OF THE SUPREME COURT

[stamp—I hereby certify that the foregoing is a true copy of the original on file in my office. /s/ Stephen W. Townsend, CLERK OF THE SUPREME COURT OF NEW JERSEY]

APPENDIX B

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-6485-94T2

SAMUEL NARO and LINDA NARO,
husband and wife,

Plaintiffs-Appellants,

v.

HAMILTON TOWNSHIP, HAMILTON POLICE DEPARTMENT, DETECTIVE CAPTAIN THOMAS PIZZULLO; JOHN DOE I, JOHN DOE II, JOHN DOE III, JOHN DOE IV, JOHN DOE V, JOHN DOE VI, JOHN DOE VII, JOHN DOE VIII, JOHN DOE IX AND JOHN DOE X, (fictitious names meant to represent other police officers involved in the investigation); THE TRENTON TIMES, THE NEWHOUSE PUBLISHING COMPANY, PETER PAGE, RICHARD BILOTTI, THE TRENTONIAN, JOURNAL REGISTER COMPANY, MARK A. WALIGORE, PAUL MICKLE, H.L. SCHWARTZ, III, RON ROE I, RON ROE II, RON ROE III, RON ROE IV, RON ROE V, RON ROE VI, RON ROE VII, RON ROE VIII, RON ROE IX AND RON ROE X,

Defendants-Respondents.

[FILING DATE, APPELLATE DIVISION, SEP 4 1996,
/s/ R. Emille Cox, Clerk]

Submitted April 3, 1996 - Decided SEP 04 1996

Before Judges Long, Muir, Jr. and Loftus.

On appeal from Superior Court of New Jersey, Law Division, Mercer County.

Robert A. Ballard, Jr., attorney for appellants.

Hughes & Hendrix, attorneys for respondents The Trentonian, Journal Register Company, Mark A. Waligore, Paul Mickle and H.L. Schwartz, III (Renee Pozzuoli Buecker, on the brief).

Robinson, St. John & Wayne, attorneys for respondents The Times, Peter Page and Richard Bilotti (Steven L. Lapidus, on the brief).

PER CURIAM

Samuel and Linda Naro, plaintiffs, appeal from summary judgment dismissing their complaint against *The Times (Times)*, Peter Page, Richard Bilotti, *The Trentonian (Trentonian)*, Journal Register Company, Mark A. Waligore, Paul Mickle and H.L. Schwartz, defendants. The Naros also appeal from an order quashing the subpoena served upon defendant, Paul Mickle.

On appeal, the Naros contend:

POINT I

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANTS, *THE TIMES*, PETER PAGE, RICHARD BILOTTI, *THE TRENTONIAN*, JOURNAL REGISTER COMPANY, MARK A. WILIGORE, PAUL MICKLE, AND H.L. SCHWARTZ, III ON OCTOBER 6, 1994 WHEN MATERIAL ISSUES OF FACT EXISTED TO BE DETERMINED BY THE FACT FINDER.

POINT II

THE TRIAL COURT ERRED IN QUASHING THE SUBPOENA SERVED UPON THE DEFENDANT, PAUL MICKLE.

We have reviewed the record and conclude that these contentions are without merit. We affirm.

On October 15, 1991, the Naros filed a complaint alleging that the defendants made defamatory statements about Samuel Naro (Naro) in connection with the murder of a school teacher. The relevant facts are as follows.

Two days prior to the publication of alleged defamatory articles, Naro, a Trenton firefighter, was charged with assault and robbery of Andrew Horchak (Horchak), a seventy-eight year old man, on October 23, 1990. After a bench trial on March 12, 1993, he was found not guilty by reason of temporary insanity.

On October 25, 1990, the *Times* published an article which stated that Naro was a suspect in the September 20, 1989 murder and attempted robbery of Marjorie Szeker, a teacher at the Hun School in Princeton. The front page article read: "Firefighter under fire" with a subtitle "Cops: Alleged robber is murder suspect." The composite sketches printed in the October 25, 1990 *Times* article showed the murder suspect as a somewhat disheveled individual with a stubble of beard growth. There was also a composite sketch of an accomplice. The article quoted a township police detective as stating "[w]e are looking at everybody, and as soon as they said [Naro] used disguises, that [Naro] generally fits the composite and generally fits the height requirement, we got interested."

On October 25, 1990, the *Trentonian* published an article which indicated that Naro, 48, bore a facial resemblance to a composite sketch of one of two suspects in the Szeker murder. The *Trentonian* article indicated that the duffle bag seized from Naro at the alleged robbery of Horchak contained a wig and other disguises which might link him to the Szeker slaying. The headline of that article was: "Fireman

to be quizzed in teacher slay. Clues prompt police to quiz fireman in teacher's killing."

On October 26, 1990, the *Trentonian* published another article with the following headline: "Van link probe between fireman, teacher slaying." The article stated that Naro, "owned a heavy duty step-side van," and the "police believe the van involved in the Szeker murder was a small sized van." The article indicated that "others" said that since it was raining heavily when Szeker was knifed and only a fleeting glimpse of the van was seen, a larger van might have been involved. Follow-up articles appeared in the *Trentonian* on October 26, 27 and 29, 1990 and in the *Times* on October 26, 1990.

Summary judgment will only be granted when there are no genuine issues of material fact. *See Brill v. Guardian Life Ins. Co. of Am.*, 142 *N.J.* 520, 536 (1995); *R.* 4:46-2. Expeditious disposition of claims based upon alleged libelous publications is appropriate whenever possible. *See Maressa v. New Jersey Monthly*, 89 *N.J.* 176, 196, *cert. denied*, 459 *U.S.* 907, 103 *S.Ct.* 211, 74 *L.Ed.*2d 169 (1982). Summary judgment has been recognized as an important tool for disposing of non-meritorious libel lawsuits. *See Costello v. Ocean County Observer*, 136 *N.J.* 594, 605 (1994). When the evidence is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment. *See Brill v. Guardian Life Ins. Co. of Am., supra*, 142 *N.J.* at 536. The court must base its consideration of the evidence in the light most favorable to the parties who opposed the summary judgment. *Id.* at 523.

The law of defamation imposes liability for the publication of false matters injuring the reputation of others. *See Maressa v. New Jersey Monthly, supra*, 89 *N.J.* at 190. Libel plaintiffs who have the constitutional status of "public officials" or "public figures" cannot recover unless they

establish by clear and convincing proof that the defendants published false and defamatory statements about them with "actual malice." *See New York Times v. Sullivan,* 376 *U.S.* 254, 84 *S.Ct.* 710, 11 *L.Ed.*2d 686 (1964), *see also Philadelphia Newspapers, Inc. v. Hepps,* 475 *U.S.* 767, 775, 106 *S.Ct.* 1558, 1563, 89 *L.Ed.*2d 783, 791-92 (1986). In *Gertz v. Robert Welch, Inc.,* 418 *U.S.* 323, 94 *S.Ct.* 2997, 41 *L.Ed.*2d 789 (1974), the Supreme Court identified two categories of public figures to whom the constitutional libel standard of actual malice pertain: (1) the "all-purpose" public figures and (2) the "limited-purpose" public figures. *Id.,* 418 *U.S.* at 351, 94 *S.Ct.* at 3013, 41 *L.Ed.*2d at 812. The latter individual becomes a public figure commonly because he "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues." *Ibid.*

In *Wolston v. Reader's Digest Ass'n, Inc.,* 443 *U.S.* 157, 99 *S.Ct.* 2701, 61 *L.Ed.*2d 450 (1979), the Court held that a person who engages in criminal conduct does not automatically become a "public figure." *Id.,* 443 *U.S.* at 168-69, 94 *S.Ct.* at 2707-09, 61 *L.Ed.*2d at 460-61. Thus, public figure status of a criminal defendant, who is the subject of the alleged defamation in a libel case is to be determined no differently than in any other libel case; namely, by focusing on the "nature and extent of an individual's participation in the controversy giving rise to the [alleged] defamation." *Ibid.*

Two days prior to the publication of the articles in the *Times* and the *Trentonian,* Naro was arrested after attempting to flee on foot following the assault and robbery of an elderly man in Trenton. He wore a disguise during the assault. Naro also owned a van during this time period. The two Trenton local newspapers, *Times* and *Trentonian,* gave the Horchak robbery and the fact that Naro was a firefighter a significant amount of publicity. It was a *Trentonian* cover

story on October 24, 1990, "Fireman flips out; maces, mugs elderly neighbor;" and "Three witnesses tackle fireman after holdup try." The *Times* published an article on October 24, 1990, entitled " 'Very sad case' Cops: City firefighter robbed man, 78." Naro then become a suspect in the Szeker murder, and as such became a limited-purpose public figure.

The plaintiffs have a burden under the First Amendment of proving that any defamatory statements published about Naro in the *Times* or the *Trentonian* were false and published with actual malice. *See Philadelphia Newspapers, Inc. v. Hepps, supra,* 475 *U.S.* at 775-76, 106 *S.Ct.* at 1563-64, 89 *L.Ed.*2d at 791-92; *Romaine v. Kallinger,* 109 *N.J.* 282, 289-91 (1988).

"In assessing the [allegedly defamatory] language, the court must view the publication as a whole and consider particularly the context in which the statement appears." *Romaine v. Kallinger, supra,* 109 *N.J.* at 290. The New Jersey Supreme Court has ruled that only subjective evidence will satisfy plaintiffs' actual malice burden:

> The actual-malice standard is subjective. [citation omitted] Accordingly, the inquiry concerns [the defendant's] state of mind. To find actual malice, the factfinder must determine that the defendant in fact entertained serious doubts about the truth of the statement or that the defendant had a subjective awareness of the story's probable falsity.
>
> [*Costello v. Ocean County Observer, supra,* 136 *N.J.* at 615; *accord Lawrence v. Bauer Pub. & Printing Ltd.,* 89 *N.J.* 451, 467-68, *cert. denied,* 459 *U.S.* 999, 103 *S.Ct.* 358, 74 *L.Ed.*2d 395 (1982).]

In this case plaintiffs failed to present substantial evidence that the newspaper defendants knew Naro was not a suspect

or entertained serious doubts about whether he was a suspect in the Szeker murder. The basis of their stories arose primarily from commentary by police officers, some of whom were specifically identified, and factual circumstances surrounding the Horchak robbery. Thus, the Naros failed to establish facts to sustain their burden that the statements were false and made with actual malice.

The *Restatement (Second) of Torts* summarizes the fair report privilege as follows:

> The publication of defamatory matter concerning another in a report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern is privileged if the report is accurate and complete or a fair abridgement of the occurrence reported.
>
> [*Restatement (Second) of Torts* § 611, at 297 (1977).]

In this case, we conclude that the journalist reports in the *Times* and the *Trentonian* were protected by the fair report privilege. *See Costello v. Ocean County Observer, supra,* 136 *N.J.* at 607.

Therefore, we affirm the order of the trial court granting summary judgment. *Brill v. Guardian Life Ins. Co. of Am., supra,* 142 *N.J.* 520.

We find no merit to appellant's second contention. *R.* 2:11-3(e)(1)(A), (E).

Affirmed.

[stamp—I hereby certify that the foregoing is a true copy of the original on file in my office. /s/ R. Emille Cox, Clerk]

APPENDIX C

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY
DOCKET NO. L-91-4718

ROBINSON, ST. JOHN & WAYNE
Two Penn Plaza East
Newark, New Jersey 07105
(201) 491-3300
Attorneys for Defendants
The Times, Peter Page
and Richard Bilotti

SAMUEL NARO and LINDA NARO,
husband and wife,

Plaintiffs,

vs.

HAMILTON TOWNSHIP, et al.

Defendants,

ORDER

[stamp—FILED, OCT 6 1994, JUDGE PHILLIP LEWIS PALEY]

This matter, having come before the Court on the motion of defendants *The Times,* Peter Page and Richard Bilotti for summary judgment; and the Court having reviewed the papers submitted by, and having heard oral argument of, counsel; and for good cause shown;

IT IS on this 6th day of October, 1994;

ORDERED that the motion of defendants *The Times,* Peter Page and Richard Bilotti for summary judgment dismissing all claims against them in this action be and hereby is granted.

/s/ Phillip Lewis Paley
PHILLIP LEWIS PALEY, J.S.C.

APPENDIX D

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY

HUGHES & HENDRIX
850 Bear Tavern Road
Suite 304
Trenton, New Jersey 08628
(609) 883-0040
Attorneys for Defendants
The Trentonian, Journal Register Company
Mark A. Waligore, Paul Mickle and H.L. Schwartz, III

CIVIL ACTION
DOCKET NO: L-91-4718

SAMUEL NARO and LINDA NARO,
husband and wife

Plaintiffs,

vs.

HAMILTON TOWNSHIP, et al.

Defendants.

ORDER

[stamp—FILED, OCT 6 1994, JUDGE PHILLIP LEWIS PALEY]

THIS MATTER being brought before the Court by HUGHES & HENDRIX, attorneys for defendants, *The Trentonian,* Journal Register Company, Mark A. Waligore, Paul Mickle and H.L. Schwartz, III, for an Order granting Summary Judgment and the Court having reviewed the moving papers and for good cause shown;

IT IS on this 6th of October, 1994;

ORDERED that Summary Judgment in favor of defendants *The Trentonian,* Journal Register Company, Mark A.

Waligore, Paul Mickle and and H.L. Schwartz III, be and is hereby granted and the Complaint against defendants be dismissed with prejudice.

/s/ Phillip Lewis Paley
PHILLIP LEWIS PALEY, J.S.C.

1068

APPENDIX E

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY
DOCKET NO. L-91-4718

ROBERT A. BALLARD, JR., ESQUIRE
Liberty Court - Suite 1200
260 Highway 202/31
Flemington, New Jersey 08822
(908) 806-3171
ATTORNEYS FOR PLAINTIFF

Civil Action

SAMUEL NARO and LINDA NARO,
Plaintiff,

vs.

HAMILTON TOWNSHIP, et al.
Defendants.

STIPULATION OF DISMISSAL (WITH PREJUDICE)

The matter in difference in the above entitled action having been amicably adjusted by and between Plaintiffs and the Defendants, Hamilton Township, Hamilton Township Police Department and Captain Pizzullo, only, it is hereby stipulated and agreed that the same be and it is hereby dismissed without costs and with prejudice against either party.

By /s/ Vincent J. Cirlin
VINCENT J. CIRLIN
Attorneys for Defendant

By /s/ Robert A. Ballard, Jr.
ROBERT A. BALLARD, JR.
Attorneys for Plaintiff

Dated: July 25, 1995

APPENDIX F

NOTICE OF APPEAL

SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION

Attorney of Record:

ROBERT A. BALLARD,
Liberty Court - Suite 1200
260 Highway 202/31
Flemington, NJ 08822
(908) 806-3171
Attorney for Plaintiffs:
Samuel Naro and Linda Naro

Title of Action as Captioned Below

SAMUEL NARO and LINDA NARO,
husband and wife,

Plaintiffs,

vs.

HAMILTON TOWNSHIP, HAMILTON TOWNSHIP POLICE DEPT., DET. CAPTAIN THOMAS PIZZULLO, THE TRENTON TIMES, THE NEWHOUSE PUBLISHING CO., PETER PAGE, RICHARD BILOTTI, THE TRENTONIAN, JOURNAL REGISTER CO., MARK A. WALIGORE, PAUL MICKLE, H.L. SCHWARTZ, III, et al.,

Defendants.

On Appeal From: Superior Court of New Jersey; Law Division: Hunterdon County; Docket No.: L-91-4718; Trial Court Judges The Hon. Phillip Lewis Paley, J.S.C.; The Hon. David J. Schroth, J.S.C.

Civil (X) Criminal( ) Juvenile( )

[stamp—ORIGINAL FILED, JUL 27 1995, _____,
Emille R. Cox, Esq., Clerk]

NOTICE IS HEREBY GIVEN THAT Plaintiffs, Samuel Naro and Linda Naro, APPEALS TO THE SUPERIOR

COURT OF NEW JERSEY, APPELLATE DIVISION, FROM THE JUDGMENT ( ) ORDERS (xx) Other (Specify) ( )_____ entered in this action by The Hon. Phillip Lewis Paley, J.S.C., on October 6, 1994, granting summary judgment in favor of the Defendants, The Times, Peter Page, Richard Bilotti, The Trentonian, Journal Register Company, Mark A. Waligore, Paul Mickle and H.L. Schwartz, III, and the Order entered by the Hon. David J. Schroth dated June 26, 1995 quashing the Subpoena served upon Defendant, Paul Mickle.

IF APPEAL IS FROM LESS THAN THE WHOLE, SPECIFY WHAT PARTS OR PARAGRAPHS ARE BEING APPEALED:

Not applicable.

ARE ALL ISSUES AS TO ALL PARTIES DISPOSED OF IN THE ACTION BEING APPEALED ( ) Yes (XX) No. On June 26, 1995 at the onset of trial, the case was settled with the remaining Defendants.

If not, is there a certification of final judgment entered pursuant to R. 4:42-2 ( ) Yes (XX) No.

Priority under R. 1:2-5 ( ) Yes (XX) No. Application Section under the Rule_____

In Criminal, Quasi-Criminal and Juvenile Cases . . . Not Incarcerated ( ) Incarcerated ( ) Confined At:

Give a concise statement of the offense and of the judgment date entered and any sentence of disposition imposed.

APPENDIX G

SUPREME COURT OF NEW JERSEY
DOCKET NO.:
APPELLATE DIVISION DOCKET #: A-6485-94T2

LAW OFFICES OF
ROBERT A. BALLARD, JR., ESQUIRE
Liberty Court - Suite 1200
260 Highway 202-31
Flemington, New Jersey 08822
(908) 806-3171
ATTORNEYS FOR PLAINTIFF/PETITIONER

Civil Action

SAMUEL NARO and LINDA NARO,
husband and wife,

Plaintiffs

vs.

HAMILTON TOWNSHIP, HAMILTON TOWNSHIP POLICE DEPT., DETECTIVE CAPTAIN THOMAS PIZZULLO; JOHN DOE I, JOHN DOE II, JOHN DOE III, JOHN DOE IV, JOHN DOE V, JOHN DOE VI, JOHN DOE VII, JOHN DOE VIII, JOHN DOE IX, JOHN DOE X (fictitious names meant to represent other police officers involved in the investigation; THE TRENTON TIMES, THE NEWHOUSE PUBLISHING CO., PETER PAGE, RICHARD BILOTTI, THE TRENTONIAN, JOURNAL REGISTER COMPANY, MARK A. WALIGORE, PAUL MICKLE, H.L. SCHWARTZ, III, RON ROE I, RON ROE II, RON ROE III, RON ROE IV, RON ROE V, RON ROE VI, RON ROE VII, RON ROE VIII, RON ROE IX, AND RON ROE X,

Defendants

PETITION FOR CERTIFICATION TO THE SUPERIOR COURT, APPELLATE DIVISION

The Hon. Virginia Long; The Hon. Robert Muir, Jr.; The Hon. Marilyn Loftus

To: The Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey

Samuel Naro and Linda Naro, of 42 Ziegler Lane, Trenton, New Jersey, respectfully show:

1. That the Appellate Court erred in the application of *Romaine v. Kallinger,* 109 N.J. 282 (1988) in that the Appellate Division ignored the Plaintiffs' proofs as to actual malice.

2. That the Appellate Court erred in determining that the Plaintiff was a "limited purpose public figure".

These issues are more fully set forth in the annexed Brief in support of this Petition for Certification.

WHEREFORE, the Plaintiffs pray, for the reasons set forth herein, and in the annexed brief, that this Court grant certification.

Respectfully submitted,

/s/ Robert A. Ballard, Jr.
ROBERT A. BALLARD, JR.
Attorney for Plaintiffs/Petitioners

I hereby certify that the foregoing petition presents a substantial question meriting certification, and that it is filed in good faith and not for purposes of delay.

/s/ Robert A. Ballard, Jr.
ROBERT A. BALLARD, JR.
Attorney for Plaintiffs/Petitioners

Dated: September 17, 1996

APPENDIX H

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY
DOCKET NO. L91-4718

ROBERT A. BALLARD, JR., ESQUIRE
Liberty Court - Suite 120
260 Highway 202/31
Flemington, New Jersey 08822
(908) 806-3171
ATTORNEY FOR

Civil Action

SAMUEL NARO and LINDA NARO,
husband and wife

Plaintiffs,

v.

HAMILTON TOWNSHIP; HAMILTON TOWNSHIP POLICE DEPARTMENT; DETECTIVE CAPTAIN THOMAS PIZZULLO; JOHN DOE I, JOHN DOE II, JOHN DOE III, JOHN DOE IV, JOHN DOE V, JOHN DOE VI, JOHN DOE VII, JOHN DOE VIII, JOHN DOE IX, JOHN DOE X (fictitious names meant to represent other police officers involved in the investigation); THE TRENTON TIMES; THE NEWHOUSE PUBLISHING COMPANY, owner of The Trenton Times; THE NEWHOUSE PUBLISHING COMPANY, owner of The Trenton Times; PETER PAGE, a staff writer of the Trenton Times; RICHARD BILOTTI, publisher of the Trenton Times; THE TRENTONIAN; JOURNAL REGISTER COMPANY, owner of The Trentonian, MARK A. WALIGORE and PAUL MICKLE, staff writers of the Trentonian; H. L. SCHWARTZ, III, publisher of the Trentonian; RON ROE I, RON, ROE II, RON ROE III, RON ROE IV, RON ROE V, RON ROE VI, RON ROE VII, RON ROE VIII, RON

ROE IX, RON ROE X (fictitious names meant to represent other employees of the Defendant newspapers whose identities are presently unknown;

Defendants.

COMPLAINT AND JURY DEMAND

[Filed stamp is illegible]

Plaintiffs, SAMUEL NARO and LINDA NARO, residing at 17 Ziegler Avenue, Trenton, County of Mercer, State of New Jersey by way of complaint against the Defendants, HAMILTON TOWNSHIP; HAMILTON TOWNSHIP POLICE DEPARTMENT; DETECTIVE CAPTAIN THOMAS PIZZULLO; JOHN DOE I, JOHN DOE II, JOHN DOE III, JOHN DOE IV, JOHN DOE V, JOHN DOE VI, JOHN DOE VII, JOHN DOE VIII, JOHN DOE IX, JOHN DOE X (fictitious names meant to represent other police officers involved in the investigation); THE TRENTON TIMES; THE NEWHOUSE PUBLISHING COMPANY, owner of The Trenton Times; PETER PAGE, a staff writer of the Trenton Times; RICHARD BILOTTI, publisher of the Trenton Times; THE TRENTONIAN; JOURNAL REGISTER COMPANY, owner of the Trentonian, MARK A. WALIGORE and PAUL MICKLE, staff writers of the Trentonian; H. L. SCHWARTZ, III, publisher of the Trentonian; RON ROE I, RON, ROE II, RON ROE III, RON ROE IV, RON ROE V, RON ROE VI, RON ROE VII, RON ROE VIII, RON ROE IX, RON ROE X (fictitious names meant to represent other employees of the Defendant newspapers whose identities are presently unknown, say:

FIRST COUNT

1. The Defendant, The Newhouse Publishing Company, was on or about the 25th day of October, 1990 and at all times hereinafter mentioned, the owner of a newspaper known as The Times a/k/a Trenton Times, which circulated

in the area surrounding Trenton, New Jersey to include Mercer County, State of New Jersey.

2. The Defendant, Richard Bilotti, was on the above aforementioned date and at all times hereinafter mentioned, the publisher of The Times, a/k/a Trenton Times.

3. On the 25th day of October, 1990, the Defendant, Peter Page, was and at all times hereinafter mentioned, a staff writer of The Times, a/k/a Trenton Times.

4. Ron Roe I, Ron Roe II, Ron Roe III, Ron Roe IV, Ron Roe V, Ron Roe VI, Ron Roe VII, Ron Roe VIII, Ron Roe IX and Ron Roe X are fictitious names meant to represent other employees of the Defendant newspapers whose identities are presently unknown.

5. On the 25th day of October, 1990, the Defendant, Peter Page as an agent servant and/or employee of the Defendants, The Times, and/or Newhouse Publishing Company, falsely and maliciously wrote and published or cause to be written and published in said newspaper following words of and concerning the Plaintiff: "Is a suspect in the September 1989 murder of Majorie Szeker, Township Police confirmed yesterday".

6. By reason of the foregoing false and libelous statement, willfully and maliciously made by the Defendants aforesaid, the Plaintiff has been injured in his good name, fame and credit, and has brought into public disgrace and infamy amongst his neighbors and his community has suffered humiliation, shame, embarrassment and degradation and has further suffered and continues to suffer mental and emotional distress and has otherwise been damaged.

WHEREFORE, Plaintiffs demand Judgment against the Defendants, The Times, a/k/a The Trenton Times, Newhouse Publishing Company, Richard Bilotti and Peter Page, and Ron Roe I, Ron Roe II, Ron Roe III, Ron Roe IV, Ron

Roe V, Ron Roe VI, Ron Roe VII, Ron Roe VIII, Ron Roe IX and Ron Roe X for compensatory and punitive damages together with attorneys' fees, cost of suit and interest.

COUNT TWO

1. The Plaintiffs repeat each and every allegation of Count One as though set forth at length herein.

2. The Defendant, Journal Register Company, was on the 26th day of October, 1990 and at all times hereinafter mentioned, the owner of a newspaper known as The Trentonian, which circulated in the area surrounding Trenton, New Jersey to include Mercer County, State of New Jersey.

3. The Defendant, H.L. Schwartz, III, was on the above aforementioned date and at all times hereinafter mentioned, the publisher of The Trentonian.

4. On the 26th day of October, 1990, the Defendant, Mark A. Waligore and Paul Mickle, were and at all times hereinafter mentioned, staff writers of The Trentonian.

5. Ron Roe I, Ron Roe II, Ron Roe III, Ron Roe IV, Ron Roe V, Ron Roe VI, Ron Roe VII, Ron Roe VIII, Ron Roe IX and Ron Roe X are fictitious names meant to represent other employees of the Defendant newspapers whose identities are presently unknown.

6. On the 26th day of October, 1990, the Defendants, Mark A. Waligore and Paul Mickle, as agents servants and/or employees of the Defendants, The Trentonian and/or Journal Register Company, falsely and maliciously wrote and published or cause to be written and published in said newspaper following words of and concerning the Plaintiff: The Trenton suspect owned a van at the time of the Marjorie Szeker murder, where a van was spotted fleeing the seen.

7. By reason of the foregoing false and libelous statement, willfully and maliciously made by the Defendants aforesaid,

the Plaintiff has been injured in his good name, fame and credit, and has brought into public disgrace and infamy amongst his neighbors and his community has suffered humiliation, shame, embarrassment and degradation and has further suffered and continues to suffer mental and emotional distress and has otherwise been damaged.

WHEREFORE, Plaintiffs demand Judgment against the Defendants, The Trentonian, Journal Register Company, H.L. Schwartz, III, Mark A. Waligore and Paul Mickle, and Ron Roe I, Ron Roe II, Ron Roe III, Ron Roe IV, Ron Roe V, Ron Roe VI, Ron Roe VII, Ron Roe VIII, Ron Roe IX and Ron Roe X for compensatory and punitive damages together with attorneys' fees, cost of suit and interest.

COUNT THREE

1. The Plaintiffs repeat each and every allegation of the First and Second Counts as though set forth at length herein.

2. The Defendant, Hamilton Township, was and is a Municipal Corporation organized under the laws of the State of New Jersey.

3. Defendant, Thomas Pizzullo, was a police officer employed by the Hamilton Township Police Department at all times relevant to this Complaint.

4. John Doe I, John Doe II, John Doe III, John Doe IV, John Doe V, John Doe VI, John Doe VII, John Doe VIII, John Doe IX and John Doe X are fictitious names meant to represent other police officers whose identities are presently unknown and who were involved in the investigation concerning the allegations in this Complaint.

5. On or about October 24th, 1990, the Defendant, Thomas Pizzullo, a Detective Captain with the Hamilton Township Police Department, acting as an employee, agent and/or servant of said Hamilton Township Police Depart-

ment did falsely and maliciously publish to third persons that the Plaintiff herein, Samuel Naro was a "suspect" in the September, 1989 murder of one Marjorie Szeker.

6. By reason of the foregoing false and slanderous statements, willfully and maliciously made by the Defendants aforesaid, the Plaintiff has been injured in his good name, fame and credit, and has brought into public disgrace and infamy amongst his neighbors and his community has suffered humiliation, shame, embarrassment and degradation and has further suffered and continues to suffer mental and emotional distress and has otherwise been damaged.

WHEREFORE, Plaintiffs demand Judgment against the Defendants, Hamilton Township, Detective Captain Thomas Pizzullo, John Doe I, John Doe II, John Doe III, John Doe IV, John Doe V, John Doe VI, John Doe VII, John Doe VIII, John Doe IX and John Doe X, for compensatory and punitive damages together with attorneys' fees, cost of suit and interest.

COUNT FOUR

1. The Plaintiffs repeat each and every allegation of the First, Second and Third counts as though set forth at length herein.

2. The libelous and/or slanderous conduct by the Defendants was extreme, outrageous and was far beyond the bounds of decency as to be intolerable to a civilized community.

3. The emotional distress suffered by the Plaintiff was so severe as to be intolerable to a reasonable person.

4. By reason of the foregoing false and libelous statements and/or publications, willfully and maliciously made by the Defendants aforesaid, the Plaintiff has been injured in his good name, fame and credit, and has brought into public disgrace and infamy amongst his neighbors and his commu-

nity has suffered humiliation, shame, embarrassment and degradation and has further suffered and continues to suffer mental and emotional distress and has otherwise been damaged.

WHEREFORE, Plaintiffs demand Judgment against the Defendants, HAMILTON TOWNSHIP; HAMILTON TOWNSHIP POLICE DEPARTMENT; DETECTIVE CAPTAIN THOMAS PIZZULLO; JOHN DOES I through X; THE TRENTON TIMES; THE NEWHOUSE PUBLISHING COMPANY, owner of The Trenton Times; PETER PAGE, a staff writer of the Trenton Times; RICHARD BILOTTI, publisher of the Trenton Times; THE TRENTONIAN; JOURNAL REGISTER COMPANY, owner of The Trentonian, MARK A. WALIGORE and PAUL MICKLE, staff writers of the Trentonian; H. L. SCHWARTZ, III, publisher of the Trentonian; RON ROES I through X, for compensatory and punitive damages together with attorneys' fees, cost of suit and interest.

COUNT FIVE

1. The Plaintiffs repeat each and every allegation of the First, Second, Third and Fourth Counts as though set forth at length herein.

2. Defendants' conduct as aforesaid in compromising the physical solitude and privacy of the Plaintiff was offensive to him, and would be offensive to a reasonable person.

3. The Defendants' conduct as aforesaid constitutes the tortious invasion of the Plaintiff privacy.

4. By reason of the foregoing false and libelous and/or slanderous statements and/or publications, willfully and maliciously made by the Defendants aforesaid, the Plaintiff has been injured in his good name, fame and credit, and has brought into public disgrace and infamy amongst his neigh-

bors and his community has suffered humiliation, shame, embarrassment and degradation and has further suffered and continues to suffer mental and emotional distress and has otherwise been damaged.

WHEREFORE, Plaintiffs demand Judgment against the Defendants, HAMILTON TOWNSHIP; HAMILTON TOWNSHIP POLICE DEPARTMENT; DETECTIVE CAPTAIN THOMAS PIZZULLO; JOHN DOES I through X; THE TRENTON TIMES; THE NEWHOUSE PUBLISHING COMPANY, owner of The Trenton Times; PETER PAGE, a staff writer of the Trenton Times; RICHARD BILOTTI, publisher of the Trenton Times; THE TRENTONIAN; JOURNAL REGISTER COMPANY, owner of The Trentonian, MARK A. WALIGORE and PAUL MICKLE, staff writers of the Trentonian; H. L. SCHWARTZ, III, publisher of the Trentonian; RON ROES I through X, for compensatory and punitive damages together with attorneys' fees, cost of suit and interest.

COUNT SIX

1. The Plaintiffs repeat each and every allegation of the First, Second, Third, Fourth and Fifth Counts as though set forth at length herein.

2. Defendants knew that their statements and/or publications were false, and/or acted in reckless disregard of their falsity and of the false light in which the Plaintiff would be placed.

3. As a result of the Defendants' statements and publications as aforesaid, the Plaintiff was placed before the public in a false light which was offensive to him and would be offensive a reasonable person.

4. By reason of the foregoing false and libelous and/or slanderous statements and/or publications, willfully and

maliciously made by the Defendants aforesaid, the Plaintiff has been injured in his good name, fame and credit, and has brought into public disgrace and infamy amongst his neighbors and his community has suffered humiliation, shame, embarrassment and degradation and has further suffered and continues to suffer mental and emotional distress and has otherwise been damaged.

WHEREFORE, Plaintiffs demand Judgment against the Defendants, HAMILTON TOWNSHIP; HAMILTON TOWNSHIP POLICE DEPARTMENT; DETECTIVE CAPTAIN THOMAS PIZZULLO; JOHN DOES I through X; THE TRENTON TIMES; THE NEWHOUSE PUBLISHING COMPANY, owner of The Trenton Times; PETER PAGE, a staff writer of the Trenton Times; RICHARD BILOTTI, publisher of the Trenton Times; THE TRENTONIAN; JOURNAL REGISTER COMPANY, owner of The Trentonian, MARK A. WALIGORE and PAUL MICKLE, staff writers of the Trentonian; H. L. SCHWARTZ, III, publisher of the Trentonian; RON ROES I through X, for compensatory and punitive damages together with attorneys' fees, cost of suit and interest.

COUNT SEVEN

1. The Plaintiffs repeat each and every allegation of the First, Second, Third, Fourth, Fifth and Sixth Counts as though set forth at length herein.

2. Plaintiff, Linda Naro is the wife of Plaintiff, Samuel Naro.

3. As a direct and proximate result of the aforesaid injuries to the Plaintiff, Samuel Naro, the Plaintiff Linda Naro will be and has been deprived of the consortium and services of the injured Plaintiff.

WHEREFORE, Plaintiff, Linda Naro, demands judgment against Defendants HAMILTON TOWNSHIP; HAMILTON TOWNSHIP POLICE DEPARTMENT; DETECTIVE CAPTAIN THOMAS PIZZULLO; JOHN DOES I through X; THE TRENTON TIMES; THE NEWHOUSE PUBLISHING COMPANY, owner of The Trenton Times; PETER PAGE, a staff writer of the Trenton Times; RICHARD BILOTTI, publisher of the Trenton Times; THE TRENTONIAN; JOURNAL REGISTER COMPANY, owner of The Trentonian; MARK A. WALIGORE and PAUL MICKLE, staff writers of the Trentonian; H. L. SCHWARTZ, III, publisher of the Trentonian; RON ROES I through X, for compensatory and punitive damages together with attorneys' fees, cost of suit and interest.

By: /s/ Robert A. Ballard, Jr.
ROBERT A. BALLARD, JR.

Dated: October 14, 1991

CERTIFICATION

This is to certify that the matter in controversy in the within captioned Complaint is not the subject of any other action pending in any Court or pending in any arbitration proceeding.

By: /s/ Robert A. Ballard, Jr.
ROBERT A. BALLARD, JR.
Attorney for Plaintiff

Dated: October 14, 1991

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that Robert A. Ballard, Esquire, is hereby designated as trial counsel in the within captioned matter.

By: /s/ Robert A. Ballard, Jr.
ROBERT A. BALLARD, JR.
Attorney for Plaintiff

Dated: October 14, 1991

JURY DEMAND

PLEASE TAKE NOTICE that the Plaintiffs demand a jury of twelve on all issues herein.

By: /s/ Robert A. Ballard, Jr.
ROBERT A. BALLARD, JR.
Attorney for Plaintiff

Dated: October 14, 1991

APPENDIX I

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

March 28, 1997

Ms. Helen E. Szabo
Espey & Szabo
260 Rte 202/31, Suite 600
Flemington, NJ 08822

Re.: Samuel L. Naro, et ux.
v. Hamilton Township, et al.
Application No. A-680

Dear Ms. Szabo:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Souter, who on March 28, 1997, extended the time to and including June 6, 1997.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By /s/ Loretta S. Ruffin
Loretta S. Ruffin
Assistant Clerk